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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

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15 TROVE BRANDS, LLC d/b/a THE
BLENDERBOTTLE COMPANY, a Utah
16 limited liability company,

17 Plaintiff,

18 v.

19 TRRS MAGNATE LLC d/b/a HYDRA CUP,

20 Defendant.
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) No. 2:22-cv-02222-TLN-CKD

) **PLAINTIFF'S REPLY IN SUPPORT**
) **OF ITS CROSS-MOTION FOR**
) **LEAVE TO CONDUCT LIMITED**
) **DISCOVERY**

) Hon. Troy L. Nunley
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TABLE OF CONTENTS

Page No.

I.	INTRODUCTION	1
II.	HYDRA CUP CONCEDES THAT BLENDERBOTTLE SHOULD BE PERMITTED TO FILE ITS MOTION TO COMPEL.....	1
III.	HYDRA CUP DOES NOT DISPUTE THE FACTS THAT ESTABLISH GOOD CAUSE TO MODIFY THE SCHEDULING ORDER.....	1
IV.	HYDRA CUP’S ARGUMENTS FAIL TO REBUT BLENDERBOTTLE’S SHOWING OF GOOD CAUSE	3
V.	CONCLUSION.....	7

TABLE OF AUTHORITIES

Page No(s).

OTHER AUTHORITIES

L.R. 251	4
Rule 30.....	3, 4

1 BlenderBottle submits the following reply memorandum in support of its cross-motion
2 for a limited extension of the discovery deadline to allow BlenderBottle to file its motion to
3 compel and to depose Hydra Cup after the Court rules on that motion.

4 **I. INTRODUCTION**

5 Hydra Cup does not even argue that it provided the basic discovery that BlenderBottle
6 has been seeking – in vain – since this case began. Nor does Hydra Cup dispute that it
7 *deliberately withheld critical emails* relating to the design of the accused products and only
8 produced them after BlenderBottle obtained them from third parties. And Hydra Cup does not
9 deny that it twice refused to participate in the preparation of a joint statement, thereby
10 preventing BlenderBottle from filing a motion to compel. Hydra Cup’s opposition fails to rebut
11 BlenderBottle’s showing of good cause to modify the scheduling order to permit BlenderBottle
12 to seek the basic discovery Hydra Cup has been withholding and use the fruits of that discovery
13 in a deposition of Hydra Cup. BlenderBottle respectfully requests that its motion be granted.

14 **II. HYDRA CUP CONCEDES THAT BLENDERBOTTLE SHOULD BE** 15 **PERMITTED TO FILE ITS MOTION TO COMPEL**

16 Hydra Cup’s opposition acknowledges that BlenderBottle should be granted leave to
17 re-file its motion to compel. For example, Hydra Cup argues that “BlenderBottle does not have
18 good cause for seeking any late discovery *beyond its pending Motion to Compel....*” Opp. at
19 9 (emphasis added). Likewise, Hydra Cup’s opposition concludes by asking the Court to “deny
20 BlenderBottle’s request to extend the discovery deadline to conduct any late discovery *beyond*
21 *its pending Motion to Compel....*” *Id.* at 21 (emphasis added). Thus, the only dispute
22 concerning BlenderBottle’s cross-motion is whether BlenderBottle should also be permitted to
23 depose Hydra Cup after its motion to compel is filed and decided.

24 **III. HYDRA CUP DOES NOT DISPUTE THE FACTS THAT ESTABLISH GOOD** 25 **CAUSE TO MODIFY THE SCHEDULING ORDER**

26 In its cross-motion, BlenderBottle argued that good cause exists to modify the
27 scheduling order because Hydra Cup has refused to provide routine discovery in this case;
28 because BlenderBottle demonstrated diligence by conferring with Hydra Cup on multiple

1 occasions and by attempting to file a timely motion to compel; and because Hydra Cup refused
2 to participate in preparing a joint statement that would have allowed BlenderBottle to seek that
3 discovery through a motion to compel. Dkt. 79-1 at 6–8.

4 In its opposition, Hydra Cup does not contend that it provided the routine discovery that
5 BlenderBottle has been attempting to obtain. For example, Hydra Cup does not argue that its
6 interrogatory responses included a list and images of the shaker bottles it has sold, as requested
7 by BlenderBottle’s Interrogatory No. 15. Without that information, BlenderBottle cannot
8 compile a complete list of the accused products.

9 Similarly, Hydra Cup does not claim to have produced sales data broken down by
10 product, even for the subset of accused products shown in the complaint. Nor does it claim to
11 have produced documents that mention BlenderBottle, or to have responded to BlenderBottle’s
12 interrogatories seeking a list of the keywords and products it targets in marketing the accused
13 products, or to have produced all of its communications with its product designers, its
14 manufacturer and its customers. Likewise, while Hydra Cup disputes their relevance, it does
15 not dispute that it deliberately withheld design documents and emails until after BlenderBottle
16 obtained them from two of Hydra Cup’s outside product designers. Nor does Hydra Cup
17 dispute that the information and documents BlenderBottle seeks are not only discoverable, but
18 central to the parties’ dispute and routinely produced in intellectual property cases.

19 Finally, Hydra Cup does not dispute that BlenderBottle met and conferred with Hydra
20 Cup on multiple occasions in an attempt to obtain this routine discovery. Nor does Hydra Cup
21 deny that it *twice* refused to provide its positions on the discovery issues raised in the joint
22 statement in support of BlenderBottle’s motion to compel, the second time in violation of a
23 court order requiring the parties to submit a compliant joint statement.

24 The result of Hydra Cup’s systematic and intransigent refusal to participate in discovery
25 is that BlenderBottle has been denied evidence on key issues in this case, and its ability to
26 prepare its case for trial has been significantly prejudiced. In particular, because Hydra Cup
27 did not provide this basic discovery before the close of fact discovery, BlenderBottle did not
28 have the information and documents necessary to conduct a meaningful deposition of Hydra

1 Cup before the fact-discovery cutoff. Thus, the undisputed facts establish good cause to grant
2 BlenderBottle's cross-motion and permit BlenderBottle to depose Hydra Cup after the
3 magistrate judge rules on BlenderBottle's motion to compel.

4 **IV. HYDRA CUP'S ARGUMENTS FAIL TO REBUT BLENDERBOTTLE'S**
5 **SHOWING OF GOOD CAUSE**

6 In the introductory paragraph of its brief, Hydra Cup argues that the parties' requests to
7 extend discovery "are not equal." Opp. at 4. BlenderBottle agrees. Unlike Hydra Cup,
8 BlenderBottle has provided the basic discovery that is routinely provided in intellectual
9 property cases. BlenderBottle has produced the design documents for the BlenderBottle
10 products that embody the patented designs and the asserted trade dresses, including their CAD
11 files, and it searched the emails its designers sent during the design process for any discussion
12 of those products. Boettcher Decl. ¶ 3. BlenderBottle has also produced sales and profitability
13 data broken down by product; market share data; advertising and marketing documents,
14 including promotional videos; summaries of its advertising and marketing expenses; emails
15 and other documents mentioning Hydra Cup; court documents, contentions and expert reports
16 for the prior cases involving the asserted intellectual property; all prior art in its possession; its
17 licenses and settlement agreements relating to the asserted intellectual property; and its
18 evidence of actual confusion by consumers. *Id.* ¶¶ 4-8. If Hydra Cup had produced comparable
19 information and documents, BlenderBottle would not have been required to file a motion to
20 compel or the present motion.

21 In the section of its brief addressing BlenderBottle's cross-motion, Hydra Cup asserts
22 that BlenderBottle is attempting "to sneak in other late discovery" beyond the issues raised in
23 its motion to compel. Opp. at 11-12. But BlenderBottle's cross-motion expressly seeks leave
24 to depose Hydra Cup after the close of discovery, and it explains why there is good cause to
25 grant BlenderBottle that relief. Hydra Cup's accusation that BlenderBottle's cross-motion is
26 sneaky or otherwise deceptive is baseless.

27 Hydra Cup suggests BlenderBottle was not diligent because it twice cancelled a noticed
28 Rule 30(b)(6) deposition of Hydra Cup. Opp. at 12. However, in each instance, BlenderBottle

1 was required to cancel the deposition because the deposition would not have been meaningful
2 without the basic information and documents Hydra Cup refused to provide. For example, if
3 BlenderBottle had proceeded with the deposition, it would have been forced to depose Hydra
4 Cup without sales data or even a complete list of the accused products. To take another
5 example, BlenderBottle would have been unable to authenticate and question Hydra Cup about
6 the damning design emails Hydra Cup withheld, emails in which Hydra Cup expressly
7 instructed its designers to copy BlenderBottle's design. *See, e.g.,* Boettcher Decl., Ex. 1.
8 BlenderBottle did everything it could to obtain the discovery it needed for the deposition,
9 including by conferring with Hydra Cup multiple times¹ and by twice attempting to file a
10 motion to compel. Boettcher Decl. ¶ 10. The cancellation of the Rule 30(b)(6) deposition was
11 the result of Hydra Cup's intransigence, not BlenderBottle's lack of diligence.

12 Hydra Cup also argues that "BlenderBottle opining it did not have enough information
13 to conduct a deposition on the final day of discovery is not good cause for extending discovery.
14 BlenderBottle's subjective opinion is not the legal standard here." Opp. at 13-14. But it is
15 undisputed that Hydra Cup has not provided the basic discovery discussed above, such as a
16 complete list of its shaker bottle products, sales data broken down by product, or all of its emails
17 with designers, manufacturers and customers. This discovery is indisputably relevant to the
18 case. Significantly, Hydra Cup never argues that any of these categories of discovery are
19 irrelevant or beyond the scope of legitimate discovery.

20 Next, Hydra Cup argues that BlenderBottle should "have brought its motion to compel
21 back in September 2023 when it first started threatening to compel instead of waiting until the
22 end of discovery." Opp. at 14. Not so. BlenderBottle properly sought to resolve its discovery
23 disputes through the meet-and-confer process before appealing to the Court for assistance, as
24 the Court's rules require. *See, e.g.,* L.R. 251(b). Those efforts were unsuccessful. Although
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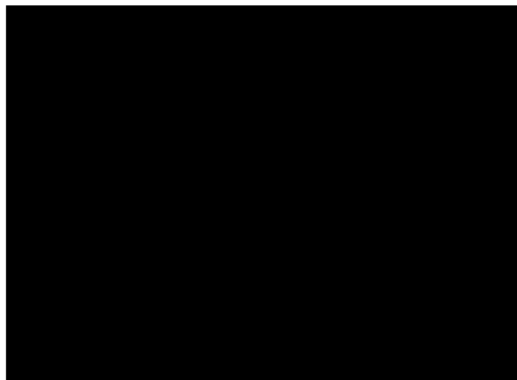
26 ¹ Hydra Cup suggests that BlenderBottle would not meet and confer on the parties' discovery
27 disputes. Opp. at 13:11-16. On the contrary, BlenderBottle conferred with Hydra Cup on at
28 least six occasions, including five times in the last two months of fact discovery. Boettcher
Decl. ¶ 10.

Hydra Cup agreed to supplement its interrogatory responses and document collection four times over a two-and-a-half-month period, this supplementation addressed only some of the parties' discovery issues.² Eventually, the approaching discovery cutoff forced BlenderBottle to stop conferring with Hydra Cup and file a motion to compel.

Hydra Cup next argues that the emails and documents it exchanged with its designer, Jeff Harlan, are irrelevant because "none of the designs discussed in the Harlan Documents are embodied in any of the Accused Products." Opp. at 15-16. Hydra Cup's argument is without merit for two reasons.

First, Hydra Cup is simply wrong that it does not use Harlan's design in the accused products. The red shaker-bottle lid shown below is Mr. Harlan's design; the image was attached to emails Mr. Harlan exchanged with Hydra Cup's CEO, Thomas Raymus. Boettcher Decl., Ex. 2 at 4. In one email, which BlenderBottle obtained directly from Mr. Harlan, [REDACTED].

[REDACTED]. Specifically, he instructs Harlan to [REDACTED]. *Id.* at 2 (emphasis added). The images below demonstrate that Harlan's design was virtually identical to the accused products.



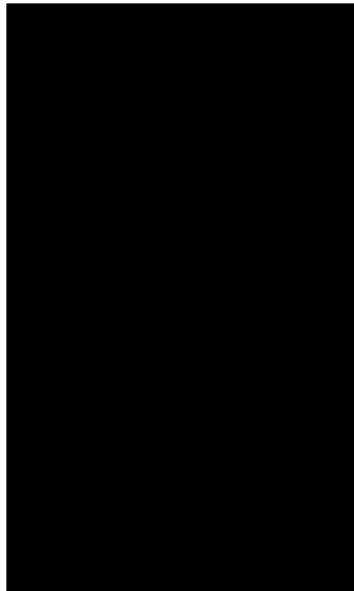
Accused Product

See Boettcher Decl. at Ex. 2, p. 4 (Raymus email) and ¶ 12 (accused product). Hydra Cup withheld this email until BlenderBottle obtained it from Mr. Harlan directly. *Id.* ¶ 11.

² Hydra Cup's supplementation did resolve some of the issues on which the parties conferred. For example, Hydra Cup produced profit-and-loss statements and supplemented its interrogatory responses to provide its invalidity contentions.

1 In another email BlenderBottle obtained directly from Mr. Harlan, Mr. Raymus
2 instructs Harlan to [REDACTED] *Id.* at Ex. 1, p. 1 (emphasis added). Harlan
3 responded by [REDACTED]

4 [REDACTED] The images below demonstrate that Harlan's design was virtually identical to
5 a Hydra Cup product BlenderBottle accused of infringement in its complaint.



Accused Product

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16 *See id.* at Ex. 1, p. 4 (Harlan email attachment) and ¶ 13 (accused product). Hydra Cup has not
17 produced this email chain in this case. *Id.* ¶ 9.

18 Second, even if Hydra Cup's position on the Harlan design documents were correct, it
19 was nevertheless improper for Hydra Cup to conceal these documents during discovery. Hydra
20 Cup cannot rely on its secretly held view that evidence is irrelevant to justify concealing that
21 evidence. The proper course of action was to produce the Harlan emails during discovery and
22 then argue their relevance to the jury. By choosing to conceal this highly relevant evidence of
23 copying, Hydra Cup flouted the federal rules of civil procedure and deprived BlenderBottle of
24 the ability to probe Hydra Cup's interpretation of the documents in a deposition.

25 Worse, it appears Hydra Cup may have destroyed evidence during this litigation. Hydra
26 Cup now claims to have produced all relevant documents in its possession. *Opp.* at 14 ("Hydra
27 Cup plans to simply declare that it has produced all requested documents and information in
28 response to BlenderBottle's anticipated Motion to Compel."). Hydra Cup did produce many

1 of its emails with Harlan *after BlenderBottle discovered them by subpoenaing Mr. Harlan.*
2 Boettcher Decl., ¶ 14. But Hydra Cup has not produced all of the emails it exchanged with
3 Harlan and Hydra Cup’s other outside designers, Ginikanwa Uzegbu and Dare Devil Display
4 Works, LLC. *Id.* ¶¶ 15-16. It is hard to imagine how Hydra Cup could have “produced all
5 requested documents and information” in its possession unless it destroyed these missing
6 emails.

7 Finally, Hydra Cup insists that many of its questionable litigation tactics – such as filing
8 overlong briefs, serving over seven hundred written discovery requests, and issuing an
9 improper subpoena on a Trademark Office examining attorney – do not constitute good cause
10 to grant BlenderBottle’s cross-motion. Opp. at 17-19. BlenderBottle has never argued
11 otherwise. BlenderBottle raised these litigation tactics in opposing Hydra Cup’s motion for a
12 sixty-day, non-reciprocal extension of discovery. Dkt. 71-1 at 2. They are relevant to the last
13 *Pomona* factor, the prejudice BlenderBottle would suffer if Hydra Cup’s motion were granted.
14 To show that *BlenderBottle’s cross-motion* is supported by good cause, BlenderBottle pointed
15 to Hydra Cup’s refusal to provide basic discovery, its concealment of highly relevant evidence,
16 BlenderBottle’s diligent efforts to meet and confer with Hydra Cup, and Hydra Cup’s strategy
17 of preventing BlenderBottle from bringing a motion to compel by refusing to participate in
18 preparing a joint statement. BlenderBottle respectfully submits that these facts establish good
19 cause to grant BlenderBottle’s cross-motion.

20 **V. CONCLUSION**

21 For the reasons set forth above, the Court should grant BlenderBottle’s cross-motion
22 for leave to file its motion to compel and depose Hydra Cup after the close of fact discovery.
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Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 18, 2024

By: /s/ Jacob R. Rosenbaum

Ali S. Razai
Sean M. Murray
Jacob R. Rosenbaum
Christian D. Boettcher

Counsel for Plaintiff TROVE BRANDS, LLC d/b/a
THE BLENDERBOTTLE COMPANY

CERTIFICATE OF SERVICE

I am a citizen of the United States of America, and I am employed in Irvine, California. I am over the age of 18 and not a party to the within action. My business address is 2040 Main Street, Fourteenth Floor, Irvine, California.

On March 18, 2024, I served **PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS OPPOSITION TO DEFENDANT'S MOTION TO MODIFY SCHEDULING ORDER AND PLAINTIFF'S CROSS-MOTION** on defendant TRRS Magnate LLC d/b/a Hydra Cup shown below via CM/ECF:

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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on March 18, 2024, at San Diego, California.

/s/ Estefania Munoz
Estefania Munoz